

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Creation of Event Radio Services)	File No. RM-11501
)	

To: The Commission

REPLY TO STATEMENTS OF SOUNDDEC LLC

Sounddec LLC (“Sounddec”)¹, by its undersigned counsel, and pursuant to Section 1.405(b) of the Commission’s rules, hereby submits this reply to statements in support of its Petition for Rulemaking (the “Petition”) to initiate a new service in the FM band – Event Radio Services (“ERS”). As stated in the Petition, this new service would be established through the creation of a new subpart within Section 73 of the Commission’s rules, “Subpart N.” Under Section 1.407 of the Commission’s rules, a notice of proposed rulemaking (“NPRM”) shall be issued when the Commission “determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and notice and public procedure thereon are required or deemed desirable by the Commission.”

Sounddec urges the Commission to adopt an NPRM to consider the addition of rules which would provide an invaluable service to the public interest. The creation of Subpart N would promote an efficient, innovative use of the FM band while streamlining a process that

¹ Sounddec LLC is a Delaware LLC and seeks to provide Event Radio Services as described herein.

currently necessitates consideration of burdensome, individualized requests for Special Temporary Authority (“STA”) by the Commission staff.

The adoption of an NPRM would give Sounddec and others an opportunity to voice their opinions and/or concerns about ERS, and fine-tune the proposed rules to maximize the public interest benefits while minimizing any potential concerns. None of the statements filed in response to the Petition offered any valid reason for the Commission not to respond with alacrity in issuing an NPRM. Nevertheless, Sounddec briefly responds below to several assertions set forth in the statements.

In its Statement opposing the Petition, National Public Radio, Inc. asserted that the Petition failed to “set forth the text or substance of the proposed rule, amendment, or rule to be repealed,”² under Section 1.401(c) of the Commission’s rules. This procedural argument is invalid on its face, as the Petition set forth the substance of the proposed Subpart N in significant detail. The Petition not only described the rationale behind the addition of Subpart N, but provided specifics such as the proposed power levels, interference and RF protection, location of the subpart within the Commission’s rules, and the nature of the proposed application process.

Several commenters suggested that Sounddec can achieve its objectives under current FCC rules, such as through the use of existing cell phone technologies, or through Part 15.³ As

² In the Matter of Creation of Event Radio Services, *Statement of National Public Radio, Inc.*, File No. RM-11501, at 2 (November 17, 2008).

³ See, e.g., In the Matter of Creation of Event Radio Services, *Comments of Monstermedia, LLC*, File No. RM-11501, at 2 (November 6, 2008) [hereinafter *Monstermedia, LLC Comments*].

stated in the Petition, however, these technologies are not a viable solution because of the power necessary to provide ERS.⁴ The maximum power at which an unlicensed provider may operate in the FM band under Part 15 is grossly insufficient. Under 47 C.F.R. §15.239(b) of the Commission's rules, the field strength of any emissions within a 200 kHz band is limited to 250 microvolts/meter at three meters. An area as large as a football stadium or golf course cannot be covered within these limitations.

Finally, several commenters contend that the adoption of ERS "would require the FCC to shift budget priorities in order to finance the regulation of this new service," forcing the Commission to "redirect current resources....when most everyone is calling for a leaner, smaller and more efficient FCC."⁵ Rather than burdening the Commission staff, the addition of Subpart N would conserve the Commission's resources, and immediately ease the burden on the staff by introducing efficient rules to process such applications instead of the ad hoc approach under the STA system. From time to time providers have been able to provide ERS type services through the use of STA requests. Under the current regime, each request to provide ERS with an STA requires the staff to analyze the request individually, without any guidance from Commission rules to determine whether a grant is appropriate. This ad hoc, case-by-case determination that the staff must engage in for each request is burdensome and unpredictable, and discourages innovation in the service due to the absence of established rules. The addition of Subpart N would provide this much-needed regulatory certainty.

⁴ In the Matter of Creation of Event Radio Services, *Petition for Rulemaking*, File No. RM-11501, at 4 (October 3, 2008).

⁵ *Monstermedia, LLC Comments*, *supra* note 3, at 3 n.2.

As mentioned in the Petition, ERS licenses are a hallmark of the regulatory regime of many other countries, such as England, France, Germany and Australia.⁶ While the Commission declined to pursue a similar petition by the National Hockey League (“NHL”) nearly a decade ago, as discussed in the comments of The National Association of Broadcasters,⁷ the widespread success of ERS or “Restricted Service” licenses issued throughout the world indicate that the United States is behind the curve in this area, and the regulatory regime as proposed in this docket is in the public interest.

Sounddec’s Petition to establish ERS in the FM band is one that will provide regulatory certainty and encourage participation in a novel area of broadcast service which will greatly serve the public interest. Likewise, it will ease the burden on the Commission staff which is currently issuing authority to broadcast ERS solely on an ad hoc, STA basis.


⁶ *Id.* at 2 n.2.

⁷ In the Matter of Creation of Event Radio Services, *Statement of The National Association of Broadcasters*, File No. RM-11501, at 1-2 (November 17, 2008). The NHL’s proposal was far narrower in scope than Sounddec’s proposal. See *In re Indoor Sports and Entertainment Radio Service, Petition for Rulemaking*, RM No. 9682 (April 2, 1999). The NHL’s proposal was designed exclusively for the 21 arenas in the United States hosting NHL hockey clubs at that time. These arenas could broadcast information such as explanations of referee calls, transportation and emergency updates, and entertainment in between periods. *Id.* at 3. The Commission declined to consider the NHL’s petition and other similar proposals. In its *Notice of Proposed Rulemaking* in the proceeding leading to the establishment of Low Power FM (LPFM) service, the Commission stated that the services proposed by the NHL and others “are sufficiently different from what is contemplated in establishing an LPFM service...[and] are better examined separately.” See *In re Creation of Low Power Radio Service, Notice of Proposed Rulemaking*, 14 FCC Rcd. 2471 (Feb. 3, 1999). It has been nearly a decade, and the Commission has not yet examined ERS proposals separately. Sounddec’s proposal is far more extensive than the NHL’s in that would serve the public interest by establishing rules that would enable providers to broadcast amateur and professional sports and entertainment events of all types, both indoor and outdoor, throughout the United States. Sounddec’s proposed rulemaking would lead to rules encouraging companies to serve the public interest by providing ERS service in a variety of novel areas, through definitive FCC rules that would ease the burden on the Commission staff.

Therefore, Sounddec respectfully requests that the Commission grant the Petition for Rulemaking and issue an NPRM forthwith.

Respectfully submitted,

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December 2, 2008

Certificate of Service

I, Barbara L. Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that a true copy of these Comments were sent this 2nd day of December 2008, via United States First Class Mail, postage prepaid, to the following:

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